

WILLIAM T. DAVIS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 04-032-SLR  
 )  
 PRECWAY APARTMENT'S BUILDING )  
 # 3, )  
 )  
 Defendant. )

Plaintiff, a pro se litigant, has filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

When reviewing pauper applications, the court must make two separate determinations. First, the court must determine whether plaintiff is eligible for pauper status pursuant to 28 U.S.C. § 1915. Based on the information provided in plaintiff's in forma pauperis affidavit, the court concludes that plaintiff has insufficient funds to pay the requisite filing fee. Accordingly, the court will grant plaintiff's request to proceed in forma pauperis.

Second, the court must "screen" the complaint to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e) (2) (B).

The United States Supreme Court has held that 28 U.S.C. § 1915(e) (2) (B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e) (2) (B) if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989).<sup>1</sup>

When reviewing complaints pursuant to 28 U.S.C. § 1915(e) (2) (B), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b) (6). Neal v. Pennsylvania Bd. of Prob. & Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b) (6) standard as appropriate standard for dismissing claim under § 1915A).<sup>2</sup> Under this standard, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v.

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<sup>1</sup> Neitzke applied § 1915(d) prior to the enactment of the PLRA. Section 1915 (e) (2) (B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

<sup>2</sup> The bases for dismissal under § 1915A are virtually identical to § 1915(e) (2) (B). Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant immune from such relief. Therefore, the court applies the § 1915A standard of review when screening non-prisoner complaints pursuant to § 1915(e) (2) (B).

Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). As discussed below, plaintiff's § 1983 claim against defendant has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B).

Plaintiff appears to be alleging that his son was assaulted inside of the Precway Apartments, Building #3. (D.I. 2 at 2) Plaintiff also appears to be alleging that he did not know that his son was living at the Precway Apartments. Plaintiff requests that the court issue an order closing the Precway Apartments. (Id. at 3)

To state a claim under 42 U.S.C. §1983, a plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986)).

To act under "color of state law" a defendant must be "clothed with the authority of state law." West, 487 U.S. at 49. Defendant at bar is a private business. As such, defendant is not in any way "clothed with the authority of state law." Id. Therefore, plaintiff's § 1983 claim against defendant has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B) .

NOW THEREFORE, at Wilmington this 25th day of June, 2004, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis is granted.
2. Plaintiff's complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B) .
3. The clerk of the court shall mail a copy of this memorandum order forthwith to plaintiff.

Sue L. Robinson  
UNITED STATES DISTRICT JUDGE